



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cosmodyne, Inc.

File: B-245515.2

Date: July 27, 1992

Robert A. Brunette, Esq., for the protester.
Barbara A. Duncombe, Esq., Vorys, Sater, Seymour and Pease,
for CVI, Inc., an interested party.
Lester Edelman, Esq., Department of the Army, for the
agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protester's interpretation of solicitation provision requiring cryogenic pumps to be of "manufacturers design" to mean that only manufacturers could bid is unreasonable where the solicitation contains no limitation as to what type of firms may bid.
2. Commercial catalogue information submitted by competing bidders provided a reasonable basis for the agency to determine that the cryogenic pumps they offered were of a "proven design," as required by the solicitation.

DECISION

Cosmodyne, Inc. protests the award of a contract to CVI, Inc. under invitation for bids (IFB) No. DACA63-91-B-0134, issued by the United States Army Corps of Engineers for high pressure cryogenic pumps to be used in the thermal blast simulator project in White Sands, New Mexico. The protester contends that the awardee's bid and the bid of another intervening bidder were nonresponsive because the literature submitted with their bids did not show they offered "self-manufactured" pumps of "proven design" as required by the IFB.

We deny the protest.

The IFB required bidders to submit prices for high pressure cryogenic pumps. The solicitation contained the Descriptive Literature clause as set forth in the Federal Acquisition Regulation (FAR) § 52.214-0021 and included requirements for

pump operation and design. In addition, the IFB provided at paragraph 2.2.1 entitled "Pump Performance" that:

"The pumps shall be manufacturers design, guaranteed to meet the following operating conditions for each pump;

Flow	212 GPM LN2
Suct. Press;	60 psig*
Disch. Press;	2900 psig
Inlet Temp;	-320 degrees F"

The solicitation further stated at paragraph 2.2.3, entitled "Proven Design":

"Manufacturer shall demonstrate to the satisfaction of the Contracting Officer that the unit proposed is of a proven design. Major [differences] or changes from the original design, if any shall be indicated on the submittals."

The IFB then went on to detail various construction and technical features which the proposed pumps must have.

The following bids were received:

Hydra Rig, Inc.	\$ 696,392
CVI	\$ 1,032,074
Martin/Baron, Inc. (MB)	\$ 1,225,000
Cosmodyne	\$ 1,460,000
Cryostar U.S.A.	\$ 1,539,425

Hydra Rig's bid was rejected because it did not contain a bid bond. CVI and MB submitted detailed pump drawings as well as manufacturers' commercial brochures describing the pumps each proposed to supply--pumps which were manufactured by firms other than the bidders. Cosmodyne submitted similar information from a pump manufacturer, ACD, Inc.--with which it is apparently affiliated through a common controlling corporation, Cryogenic Industries, Inc.--describing its LMPD Series pump in general terms. Cosmodyne also submitted a list of customers to which various LMPD pumps had been supplied over the past 14 years; it is not clear from the list whether the pumps set forth are the same or similar to the model to be supplied under the solicitation.

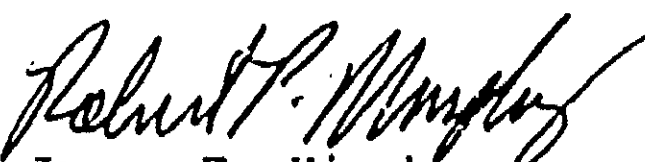
The technical data submitted by CVI was determined to meet the requirements of the solicitation and award was made to that firm.

The protester contends that the bids of CVI and MB are nonresponsive as a result of deficiencies in the technical data accompanying each bid. Specifically, Cosmodyne states that data show that the pumps offered by CVI and MB are not actually manufactured by those firms and, thus, are not of a "manufacturers design" as required by paragraph 2.2.1. Further, Cosmodyne states that neither firm has submitted data with its bid which show that "the unit proposed is of proven design," as required by IFB paragraph 2.2.3. In this regard, the protester notes that it alone submitted a customer list with its bid which shows that its pumps have proven themselves in general use in the marketplace while the other bidders failed to submit similar evidence to establish that their pump designs were in fact "proven."

We do not agree that paragraph 2.2.1 limited participation in the procurement solely to cryogenic pump manufacturers. We think that the only reasonable reading of this provision is that the pumps must be of the "manufacturers design." There is nothing in paragraph 2.2.1 or in any other provision in the IFB which requires that the bidders themselves be the manufacturers and/or designers of the pumps they offered.

We also find no merit to Cosmodyne's assertion that paragraph 2.2.3 required bidders to submit a customer list or similar data to establish that their pump designs were "proven." Paragraph 2.2.3 does not specify that any particular type of data is needed to show that the offered pumps were of a "proven design." While the IFB nowhere defines what is meant by the phrase "proven design," without further elaboration in the IFB, we think it is reasonable to read the phrase as simply requiring an established item available in the marketplace. See generally Astro-Med, Inc., B-232131, Nov. 10, 1988, 88-2 CPD ¶ 469. We believe this could be reasonably established by the submission of a catalogue or brochure depicting the pump as one offered to the commercial market. See Dresser Indus., Inc., B-228493, Feb. 17, 1988, 88-1 CPD ¶ 157. Since both CVI and MB submitted such information with their bids, we think that those firms satisfied the requirements of paragraph 2.2.3.

The protest is denied.


for James F. Hinchman
General Counsel